

AMENDED IN SENATE JUNE 15, 2014

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1859

Introduced by Assembly Member Maienschein

February 19, 2014

An act to add Article 7 (commencing with Section 6600) to Chapter 6 of Division 3 of the Business and Professions Code, to amend Section 13401 of the Corporations Code, and to add Sections 2104.5, 8406, and 15605 to the Probate Code, relating to professional fiduciaries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1859, as amended, Maienschein. Professional fiduciaries: professional corporations.

Existing law, the Professional Fiduciaries Act, establishes the Professional Fiduciaries Bureau within the Department of Consumer Affairs and requires the bureau to license and regulate professional fiduciaries, as specified.

The Moscone-Knox Professional Corporation Act provides for the organization of a corporation under specified provisions of law for the purposes of qualifying as a professional corporation under that act and rendering professional services. The act defines professional services as services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

This bill would provide for the formation of licensed professional fiduciary corporations pursuant to the ~~act described above~~ *Moscone-Knox Professional Corporation Act*, as specified, ~~and would make these corporations subject to registration by the Professional Fiduciaries Bureau and payment of a licensure fee, as specified.~~ The bill would provide that it is unprofessional conduct and a violation of the Professional Fiduciaries Act to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate these provisions, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws. The bill would require the name of a licensed professional fiduciary corporation and any name or names under which it may render professional services to contain the words “licensed professional fiduciary” and wording or abbreviations denoting corporate existence. The bill would require each director, shareholder, ~~and officer, or employee~~ of a licensed professional fiduciary corporation *who renders professional services* to be a licensed person with regard to the professional services rendered and to also be a licensed professional fiduciary. The bill would prohibit the income of a licensed professional fiduciary corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined, from accruing, in any manner, to the benefit of the shareholder or his or her shares in the licensed professional fiduciary corporation. The bill would require the bylaws of a licensed professional fiduciary corporation to include a provision that requires the capital stock of the corporation owned by a disqualified person, as defined, or a deceased person, to be sold to the corporation or to the remaining shareholders of the corporation within 60 days. The bill would require a licensed professional fiduciary corporation to maintain insurance coverage of at least \$1,000,000 for claims against the corporation, as specified. The bill would require a licensed fiduciary corporation that is appointed as a guardian, conservator, personal representative, or trustee by a court to be liable for any licensed professional fiduciary who violates the powers and duties of those appointments while acting on behalf of the corporation. *The bill would impose other various duties upon a licensed professional fiduciary corporation, as specified. The bill would provide authority to the bureau to enforce the provisions of this act, as specified, and in accordance with the Administrative Procedure Act.*

Existing law governing the administration of estates and trusts authorizes the appointment of a person as a personal representative of a decedent’s estate, a guardian or conservator of a person or an estate,

or a trustee. Existing law defines “person” to include a corporation for these purposes.

This bill would provide that if a licensed professional fiduciary corporation is appointed as a guardian, conservator, trustee, or personal representative, each shareholder, officer, director, or employee of the corporation who is a licensed professional fiduciary may individually exercise the powers and duties of that appointment, *as specified*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 7 (commencing with Section 6600) is added to Chapter 6 of Division 3 of the Business and Professions Code, to read:

Article 7. Licensed Professional Fiduciary Corporations

6600. A licensed professional fiduciary corporation is a corporation—~~that~~, *which is registered with the Professional Fiduciaries Bureau and has a currently effective certificate of registration from the bureau, and is authorized to render professional services, as defined in Section 13401 of the Corporations Code, if that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed professional fiduciaries are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), the provisions of this article, and all other statutes and regulations pertaining to the corporation and the conduct of its affairs. With respect to a licensed professional fiduciary corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code) is the Professional Fiduciaries Bureau.*

6600.3. *An applicant for registration as a licensed professional fiduciary corporation shall provide to the bureau all necessary and pertinent documents and information requested by the bureau, including the names of all of the officers, directors, shareholders, or employees who are licensed professional fiduciaries, as set*

1 *forth in subdivision (c) of Section 6600.5. The bureau may make*
2 *available forms of application for registration pursuant to this*
3 *article.*

4 *6600.5. The bureau shall issue a certificate of registration,*
5 *which may be in electronic form, if all of the following apply:*

6 *(a) The corporation is duly organized and existing under the*
7 *General Corporation Law (Division 1 (commencing with Section*
8 *100) of Title 1 of the Corporations Code).*

9 *(b) Each officer, director, shareholder, or employee who will*
10 *render professional services is a licensed person, as defined in the*
11 *Moscone-Knox Professional Corporation Act (Part 4 (commencing*
12 *with Section 13400) of Division 3 of Title 1 of the Corporations*
13 *Code).*

14 *(c) Except as provided in Section 13403 of the Corporations*
15 *Code, each officer, director, shareholder, or employee who will*
16 *render professional services is a licensed professional fiduciary*
17 *who has satisfied all of the licensing requirements under the*
18 *Professional Fiduciaries Act (Chapter 6 (commencing with Section*
19 *6500)).*

20 *(d) From the application, it appears to the bureau's satisfaction*
21 *that the affairs of the corporation will be conducted in compliance*
22 *with the law and the rules and regulations of the bureau.*

23 *(e) The corporation pays the registration fee in the amount as*
24 *the bureau may determine pursuant to Section 6600.7.*

25 *6600.6. Each licensed professional fiduciary corporation shall*
26 *renew its permit to practice annually and shall pay the renewal*
27 *fee fixed by the bureau pursuant to Section 6600.7.*

28 *6600.7. (a) The fee to be charged to each applicant for*
29 *registration as a licensed professional fiduciary corporation shall*
30 *be fixed by the bureau at an amount not to exceed two hundred*
31 *fifty dollars (\$250).*

32 *(b) The annual fee for the renewal of registration as a licensed*
33 *professional fiduciary corporation shall not exceed two hundred*
34 *fifty dollars (\$250).*

35 *(c) The license and renewal fees under subdivisions (a) and (b)*
36 *shall be set by the bureau through regulation at an amount not to*
37 *exceed that which is necessary to recover the reasonable costs to*
38 *the bureau to implement this article.*

39 *6601. It is unprofessional conduct and a violation of this chapter*
40 *for any person licensed pursuant to this chapter to violate, attempt*

1 to violate, directly or indirectly, or assist in or abet the violation
2 of, or conspire to violate any provision or term of this article, the
3 Moscone-Knox Professional Corporation Act (*Part 4 (commencing*
4 *with Section 13400) of Division 3 of Title 1 of the Corporations*
5 *Code*), or any regulations duly adopted under those provisions.

6 6602. A licensed professional fiduciary corporation shall not
7 commit or omit any act that, if committed or omitted, would
8 constitute unprofessional conduct under any statute or regulation.
9 A licensed professional fiduciary corporation, in the conduct of
10 its practice, shall observe and be bound by these statutes and
11 regulations to the same extent as a person holding a license under
12 this chapter.

13 6603. The name of a licensed professional fiduciary corporation
14 and any name or names under which it may render professional
15 services shall contain the words “licensed professional fiduciary”
16 and wording or abbreviations denoting corporate existence.

17 ~~6604. Except as provided in Section 13403 of the Corporations~~
18 ~~Code, each director, shareholder, and officer of a licensed~~
19 ~~professional fiduciary corporation shall be a licensed professional~~
20 ~~fiduciary.~~

21 6605. The income of a licensed professional fiduciary
22 corporation attributable to professional services rendered while a
23 shareholder is a disqualified person, as defined in Section 13401
24 of the Corporations Code, shall not in any manner accrue to the
25 benefit of the shareholder or his or her shares in the licensed
26 professional fiduciary corporation.

27 6606. (a) *The bureau may adopt and enforce regulations to*
28 *implement the purposes and objectives of this article.*

29 (b) *The bureau shall list the registered professional fiduciary*
30 *corporations and their managers on its publicly available Internet*
31 *Web site.*

32 ~~6606.~~

33 6606.5. (a) The bylaws of a licensed professional fiduciary
34 corporation shall include a provision that requires the capital stock
35 of the corporation owned by a disqualified person, as defined in
36 Section 13401 of the Corporations Code, or a deceased person, to
37 be sold to the corporation or to the remaining shareholders of the
38 corporation within 60 days.

39 (b) A licensed professional fiduciary corporation shall maintain
40 adequate insurance at a minimum amount of one million dollars

1 (\$1,000,000) for claims against the corporation *and for claims*
2 *against licensed professional fiduciaries who are its officers,*
3 *directors, shareholders, and employees,* by its customers arising
4 out of the rendering of professional services.

5 (c) *The minimum insurance amount required to be maintained*
6 *by this section shall be increased by two hundred fifty thousand*
7 *dollars (\$250,000) for each licensed professional fiduciary in*
8 *excess of two licensed professional fiduciaries who are members*
9 *of the licensed professional fiduciary corporation.*

10 (d) *Nothing provided in this article shall be deemed to conflict*
11 *with the common law rule in this state under which personal*
12 *liability is imposed on officers, directors, and shareholders for*
13 *damages resulting from tortious conduct that they have personally*
14 *committed or participated in, and for damages resulting from*
15 *tortious conduct that they have specifically and directly ordered.*

16 6607. (a) A licensed professional fiduciary corporation that
17 is appointed as a guardian, conservator, personal representative,
18 or trustee by a court shall be liable for any licensed professional
19 fiduciary who violates the powers and duties of those appointments
20 while acting on behalf of the corporation.

21 (b) Nothing in subdivision (a) shall be interpreted to prevent
22 the bureau from individual enforcement and disciplinary action
23 against a licensed professional fiduciary who has violated any of
24 the provisions of this chapter.

25 (c) *Notwithstanding subdivision (a), a licensed professional*
26 *fiduciary shall be entirely responsible and liable for his or her*
27 *compliance with the provisions of the Professional Fiduciaries*
28 *Act (Chapter 6 (commencing with Section 6500)) and this article.*

29 6608. *Each office of a licensed professional fiduciary*
30 *corporation shall be managed by a licensed professional fiduciary.*

31 6609. *Each licensed professional fiduciary corporation shall*
32 *file with the bureau at the times the bureau may require a report*
33 *containing information pertaining to qualification and compliance*
34 *with the statutes, rules, and regulations of the bureau, as the*
35 *bureau may determine. All reports shall be signed and verified by*
36 *an officer of the corporation.*

37 6610. *The bureau may conduct an investigation of the conduct*
38 *of the business of a licensed professional fiduciary corporation.*
39 *Upon investigation, the bureau shall have power to issue*
40 *subpoenas, administer oaths, examine witnesses, and compel the*

1 *production of records, in the same manner as upon an investigation*
2 *or formal hearing in a disciplinary matter under this chapter.*

3 6611. *All proceedings against a licensed professional fiduciary*
4 *corporation for any violation of this article or any regulations*
5 *adopted by the bureau shall be conducted in accordance with the*
6 *Administrative Procedure Act (Chapter 5 (commencing with*
7 *Section 11500) of Part 1 of Division 3 of Title 2 of the Government*
8 *Code), and shall be prosecuted by the Attorney General's office,*
9 *and the bureau shall have all the powers granted therein.*

10 6612. (a) *Notwithstanding Section 6611 and Section 11415.60*
11 *of the Government Code, the bureau may enter into a settlement*
12 *with a licensed professional fiduciary corporation or applicant*
13 *for registration instead of the issuance of an accusation or*
14 *statement of issues against that licensee or applicant.*

15 (b) *The settlement shall identify the factual basis for the action*
16 *being taken and the statutes or regulations violated.*

17 (c) *Any settlement with a licensed professional fiduciary*
18 *corporation executed pursuant to this section shall be considered*
19 *discipline and a public record and shall be posted on the bureau's*
20 *Internet Web site. Any settlement with an applicant for registration*
21 *executed pursuant to this section shall be considered a public*
22 *record and shall be posted on the bureau's Internet Web site.*

23 6613. *Notwithstanding Section 6611, if any violation occurs,*
24 *in its discretion, the bureau may refer the case to the Attorney*
25 *General or to the local district attorney for criminal prosecution.*
26 *The referral of a case for criminal prosecution shall not preclude*
27 *the bureau from taking any other action provided for in this article.*

28 SEC. 2. *Section 13401 of the Corporations Code is amended*
29 *to read:*

30 13401. *As used in this part:*

31 (a) *"Professional services" means any type of professional*
32 *services that may be lawfully rendered only pursuant to a license,*
33 *certification, or registration authorized by the Business and*
34 *Professions Code, the Chiropractic Act, or the Osteopathic Act.*

35 (b) *"Professional corporation" means a corporation organized*
36 *under the General Corporation Law or pursuant to subdivision (b)*
37 *of Section 13406 that is engaged in rendering professional services*
38 *in a single profession, except as otherwise authorized in Section*
39 *13401.5, pursuant to a certificate of registration issued by the*
40 *governmental agency regulating the profession as herein provided*

1 and that in its practice or business designates itself as a professional
2 or other corporation as may be required by statute. However, any
3 professional corporation or foreign professional corporation
4 rendering professional services by persons duly licensed by the
5 Medical Board of California or any examining committee under
6 the jurisdiction of the board, the Osteopathic Medical Board of
7 California, the Dental Board of California, the California State
8 Board of Pharmacy, the Veterinary Medical Board, the California
9 Architects Board, the Court Reporters Board of California, the
10 Board of Behavioral Sciences, the Speech-Language Pathology
11 and Audiology Board, the Board of Registered Nursing, the
12 Professional Fiduciaries Bureau, or the State Board of Optometry
13 shall not be required to obtain a certificate of registration in order
14 to render those professional services.

15 (c) “Foreign professional corporation” means a corporation
16 organized under the laws of a state of the United States other than
17 this state that is engaged in a profession of a type for which there
18 is authorization in the Business and Professions Code for the
19 performance of professional services by a foreign professional
20 corporation.

21 (d) “Licensed person” means any natural person who is duly
22 licensed under the provisions of the Business and Professions
23 Code, the Chiropractic Act, or the Osteopathic Act to render the
24 same professional services as are or will be rendered by the
25 professional corporation or foreign professional corporation of
26 which he or she is or intends to become, an officer, director,
27 shareholder, or employee.

28 (e) “Disqualified person” means a licensed person who for any
29 reason becomes legally disqualified (temporarily or permanently)
30 to render the professional services that the particular professional
31 corporation or foreign professional corporation of which he or she
32 is an officer, director, shareholder, or employee is or was rendering.

33 SEC. 3. Section 2104.5 is added to the Probate Code, to read:

34 2104.5. If a licensed professional fiduciary corporation is
35 appointed as a guardian or conservator, each shareholder, officer,
36 director, or employee of the corporation who is a licensed
37 professional fiduciary may individually exercise the powers and
38 duties of the guardian or conservator. *The court shall appoint and*
39 *name both the professional fiduciary corporation and the*
40 *individuals who may individually exercise the power and duties*

1 *of the guardian or conservator. In the event that a corporation*
2 *ceases to operate, the individuals named as guardian or*
3 *conservator shall notify the court within 10 business days that the*
4 *corporation has ceased operating and the court shall make a new*
5 *appointment. The authority and responsibility of any individuals*
6 *previously appointed guardian or conservator shall continue*
7 *regardless of the existence of the corporation until the court makes*
8 *a new appointment.*

9 SEC. 4. Section 8406 is added to the Probate Code, to read:

10 8406. If a licensed professional fiduciary corporation is
11 appointed as a personal representative, each shareholder, officer,
12 director, or employee of the corporation who is a licensed
13 professional fiduciary may individually exercise the powers and
14 duties of the personal representative. *The court shall appoint and*
15 *name both the professional fiduciary corporation and the*
16 *individuals who may individually exercise the power and duties*
17 *of the personal representative. In the event that a corporation*
18 *ceases to operate, the individuals named as guardian or*
19 *conservator shall notify the court within 10 business days that the*
20 *corporation has ceased operating and the court shall make a new*
21 *appointment. The authority and responsibility of any individuals*
22 *previously appointed guardian or conservator shall continue*
23 *regardless of the existence of the corporation until the court makes*
24 *a new appointment.*

25 SEC. 5. Section 15605 is added to the Probate Code, to read:

26 15605. If a licensed professional fiduciary corporation is
27 appointed as a trustee, each shareholder, officer, director, or
28 employee of the corporation who is a licensed professional
29 fiduciary may individually exercise the powers and duties of the
30 trustee. *The court shall appoint and name both the professional*
31 *fiduciary corporation and the individuals who may individually*
32 *exercise the power and duties of the trustee. In the event that a*
33 *corporation ceases to operate, the individuals named as trustee*
34 *shall notify the court within 10 business days that the corporation*
35 *has ceased operating and the court shall make a new appointment.*
36 *The authority and responsibility of any individuals previously*
37 *appointed as trustee shall continue regardless of the existence of*
38 *the corporation until the court makes a new appointment.*

O